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OFFICE OF PETITIONS

In re Application of :
Kaburlasos et al. : DECISION ON PETITION
Application No. 10/080,473 :
Filed: February 22, 2002 :
Attorney Docket No. 42390P13497 :

This is in response to the petition under 37 CFR 1.47(a), filed July 30, 2002 (certificate of mailing date July 22, 2002). Applicants obtained a two-month extension of time. Accordingly, the petition is timely filed. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office apologizes for any inconvenience.

The petition is dismissed.

Applicants are given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on February 22, 2002, without an executed oath or declaration. Accordingly, on March 21, 2002, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring, *inter alia*, an executed oath or declaration and a surcharge for its late filing.

In response, on July 30, 2002 (certificate of mailing date July 22, 2002), applicants filed the present petition, a declaration signed by two of the three joint inventors, and paid the necessary fees.

In the Statement of Facts, Eric King indicated that an introductory letter, a declaration/power of attorney, and an assignment were mailed to Vaishali Nikhade at his last known address on two occasions. However, Mr. Nikhade did not contact the applicants.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicants lack items (1) and (2) as set forth above.

As to item (1), Mr. King stated that an introductory letter, a declaration/power of attorney, and an assignment were mailed to the nonsigning inventor. It is unclear from the record whether Mr. Nikhade was presented with the complete application papers. Unless Mr. Nikhade was presented with a complete copy of the application papers, including the specification, claims and drawings, he could not attest that he has "reviewed and understands the application papers," and therefore, could not sign the declaration that he was given. Accordingly, applicants failed to show or provide proof that the inventor has refused to sign the declaration. See MPEP 409.03(d). To show that the inventor has refused to join in the application, applicants must show that a complete copy of the application papers, including the specification, claims and drawings, was presented to Mr. Nikhade, personally or through his designated representative, and that he did not respond to the request that he sign the declaration.

As to item (2), applicants failed to submit an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64. The declaration does not identify the country of citizenship of inventor Nikhade. The Office notes that the oath or declaration must identify the country of citizenship of each inventor. See 37 CFR 1.63(a) (3).

Accordingly, to correct the deficiencies, applicants must submit a declaration in compliance with 37 CFR 1.63 and 1.67, which identifies the entire inventive entity and the mailing address and citizenship of each inventor and is signed by the signing inventors on behalf of the nonsigning inventor, Mr. Nikhade.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Senior Petitions Attorney:**

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 220 20th Street S.
 Customer Window, Mail Stop Petition
 Crystal Plaza 2, Lobby, Room 1B03
 Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Petitions Attorney
Office of Petitions